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4 November 2002

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Qwest Communications International, Inc. Colorado/Idaho/Iowa/Nebraska/North
Dakota/Montana/Washington/Wyoming/Utah, WC Docket No. 02-314

Dear Ms. Dortch:

On November 1, 2002, the undersigned, together with Megan Doberneck, Michael Zulevic and Jason Oxman of Covad Communications Company, made an *ex parte* presentation to Commission staff in the above-referenced docket. The following Commission staff members were present: William Dever, Michael Carowitz, Gail Cohen, and Rodney McDonald, all of the Wireline Competition Bureau. The purpose of the meeting was to discuss Covad's serious concerns over Qwest's attempts to hide from Commission staff its performance of MLT testing.

As Covad explained during its presentation, Qwest's conduct has been squarely aimed at hindering Commission staff from resolving issues surrounding MLT testing, for example requiring MLT testing at the pre-ordering stage of OSS, in Covad's favor. In its comments and reply comments on Qwest's previous federal 271 applications, Covad has repeatedly raised its need for pre-order access to MLT testing as a remedy to the significant deficiencies in Qwest's OSS for loop makeup information.¹ Covad has raised these concerns on the record in both of Qwest's previous federal 271 application proceedings as well as Qwest's current 271 application proceeding.²

¹ See Covad Comments in WC Docket No. 02-148 at 13-25; Covad Reply Comments in WC Docket No. 02-148 at 8-14; Covad Comments in WC Docket No. 02-189 at 23-38; and Covad Reply Comments in WC Docket No. 02-189 at 22-25.

² See, e.g., Covad Reply Comments in WC Docket No. 02-314 at 2-27. Covad notes that its previous filings commenting on Qwest's federal 271 applications have been incorporated by reference into Qwest's currently pending 271 application proceeding. See Covad Comments in WC Docket No. 02-314 at 2; Covad Reply Comments in WC Docket No. 02-314 at 2.

There can be no doubt that Qwest knew full well the implications of its deceptions regarding MLT testing. Qwest brazenly sought to hide evidence from federal regulators in order to obtain a desired regulatory outcome. There can be no other implication drawn from the words of Mary Pat Cheshier, Director-Network Operations of the Qwest CLEC Coordination Center (QCCC), sent to the entire organization under her direction:³

CLECs have specifically asked for access to MLT. We believe this is a part of our legacy system we want to keep proprietary. As a result we don't want to bring attention to it in front of the FCC as they may have a tendency to respond to CLEC requests in a manner which may be unfavorable to us.⁴

Moreover, Qwest's conduct during the visits of Commission staff to the QCCC is not the only instance of Qwest's deceptions regarding MLT testing. Indeed, prior to reviewing the evidence set forth in AT&T's initial comments in this proceeding, Covad had no idea that Qwest was conducting MLT testing during the loop provisioning process. In previous public testimony before state commissions opposing Covad's requests for pre-order access to MLT testing, Qwest's consistent story has been that MLT testing is purely a maintenance and repair tool. For example, in hearings before the Minnesota Public Service Commission, Dennis Pappas, Director of Qwest's Technical Regulatory Group, submitted an affidavit on August 2, 2002, attesting that MLT testing "is not a pre-order tool; it is a maintenance and repair tool," even though Qwest was by that point already using MLT tests in the QCCC at the provisioning stage of its line sharing OSS.⁵ Similarly, on August 2, 2002, Barbara Brohl, Qwest's affiant on loop qualification issues, submitted an affidavit attesting that MLT was "primarily a repair test."⁶ At every turn, Qwest has attempted to hide its capabilities for performing MLT testing at stages of its OSS other than the maintenance and repair stage. Moreover, Qwest has had no other purpose than the clear purpose of preventing regulators from requiring Qwest to provide pre-order access to MLT testing.

Covad also wishes to make clear that its need for pre-order access to MLT testing is not merely speculative. As set forth in extensive detail in Covad's previous filings, Qwest has failed to meet its required burden for establishing that it provides competitors with non-discriminatory access to loop makeup information. KPMG's testing of Qwest's OSS for loop makeup information simply failed to examine Qwest's systems under the appropriate standard. Even if KPMG's testing is accepted, the only thing that testing can establish by its very terms is that competitors obtain access to the same information

³ See Qwest Reply Comment in WC Docket 02-314, Reply Declaration of Mary Pat Cheshier, at para. 1.

⁴ See AT&T Comments in WC Docket No. 02-314, Tab A, Attachment 1.

⁵ See *Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13 and 14*, Minnesota Public Utilities Commission, PUC Docket No. P-421/CI-01-1371, OAH Docket No. 7-2500-14486-2, Affidavit of Dennis Pappas at 23 (Aug. 2, 2002) (Attachment A).

⁶ See *id.*, Affidavit of Barbara J. Brohl, at 36 (Attachment B).

Qwest's retail personnel access at the pre-ordering stage. As Qwest knows, however, this is a lower standard than the one Qwest is required to meet, as established by the Commission in previous section 271 proceedings. Specifically, the Commission has made clear:

[T]he relevant inquiry is not whether [the BOC's] retail arm has access to such underlying information but whether such information exists anywhere in [the BOC's] back office and can be accessed by any of [the BOC's] personnel.⁷

The Commission previously applied this standard to make Verizon to re-file its section 271 application for Massachusetts with an improved pre-order process for access to the loop-specific loop makeup information contained in the LFACS database.⁸ In its order on Verizon's Massachusetts application, the Commission again made clear that Verizon was required to provide competitors with access to all loop makeup information in its back office, regardless of whether that information was used or accessed by Verizon's retail personnel.⁹ Because KPMG's testing of Qwest's loop information OSS fails to meet the high standard established by the Commission in previous section 271 proceedings, neither Covad nor the Commission can have any confidence that Qwest provides competitors with access to all of the loop makeup information accessible by any Qwest personnel in Qwest's back office systems. Without such a showing, Qwest's applications for 271 authorization remain noncompliant with the standards established in the Commission's previous 271 orders, and cannot be granted.

Because of this obvious deficiency in Qwest's evidentiary showing, in its previous filings Covad has requested that the Commission require Qwest to undergo an immediate audit of its loop information OSS. Covad has also requested that Qwest be required to provide competitors with pre-order access to MLT testing as a proxy for the evidentiary showing that testing under the appropriate standard would have produced. As set forth in Attachment 3, pre-order MLT testing is an extremely valuable source of information about the capabilities of a specific cable pair to support advanced services using line sharing. Specifically, pre-order MLT testing establishes the diagnostic characteristics of the loop, such as:

- Test OK, open, foreign voltage, etc.
- AC and DC signatures in Kilo Ohms
- Capacity balance
- Loop length from the Central Office
- Longitudinal Balance

⁷ See, e.g., *Application by SBC Communications Inc., et al., for Provision of In-Region, Inter-LATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29, at para. 121.

⁸ See *Application by Verizon New England Inc., et al., for Provision of In-Region, Inter-LATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, FCC 01-130, at para. 57.

⁹ See *id.* at para. 54.

In addition, MLT test results are delivered in real-time, indicating the current status of the loop. Because Qwest's loop plant is subject to changing conditions – for example, environmental changes, human intervention, and aging – the MLT provides a more accurate and up-to-date picture of loop plant condition than the static information contained in Qwest's RLDT database.¹⁰

As Covad has repeatedly shown throughout the course of Qwest's federal 271 application proceedings, Qwest has clearly failed to meet its evidentiary burden for obtaining section 271 authorization. The only evidence Qwest has brought forward to demonstrate that its loop information OSS is checklist compliant is the results of KPMG's testing; as already explained, that testing falls by its very terms. Without an independent third party test of Qwest's loop information OSS, all the Commission is left with is Qwest's word that its OSS is checklist compliant. Given what we already know about Qwest's attempts to hide information about its MLT testing capabilities from Commission staff, the Commission cannot pass Qwest's 271 applications on this record alone. As Covad has previously explained, the only way to remedy the clear deficiencies in the evidentiary record brought forward by Qwest is to require Qwest to undergo an immediate audit of its loop information OSS and to require Qwest to provide pre-order access to MLT testing. In the absence of such measures, Qwest's applications for 271 authorization must not be approved.

In addition to discussing issues regarding MLT testing, Covad also discussed a recent report issued by Cap Gemini, discussing the results of a data reconciliation conducted for the OP-5 performance metric as part of the Arizona 271 proceedings. The results of that reconciliation confirm what Covad has been saying all along: Qwest's OP-5 performance reporting is entirely unreliable.¹¹ As Cap Gemini found:

[T]he data reconciliation uncovered inherent differences between the information captured by a CLEC and the performance data captured by Qwest that prevents the CLEC from recalculating the OP-5 PID from its own data...¹²

Previously, Qwest had claimed to be unable to produce the underlying CLEC-specific data for the OP-5 metric.¹³ Without that underlying data, Covad could have no confidence that Qwest was reporting under the OP-5 metric accurately. Under the Cap Gemini data reconciliation, Qwest changed its tune, and somehow did manage to produce the data underlying its calculations. Once that data was produced, however, it became clear that Qwest's OP-5 results were wholly unreliable:

¹⁰ See Attachment C.

¹¹ See Attachment D at 14.

¹² See *id.*

¹³ See, e.g., Covad Reply Comments in WC 02-189 at 14-15, and Attachments 1 and 2.

CGE&Y finds that Qwest's published OP-5 results underreported the number of eligible installation related troubles...¹⁴

As Cap Gemini's report demonstrates, Qwest's OP-5 performance reporting is wholly unreliable. Covad herewith submits a copy of the Cap Gemini report for the Commission's review.

The twenty-page limit does not apply as set forth in DA 02-2438.

Respectfully submitted,

/s/ Praveen Goyal

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¹⁴ See Attachment D at 36.